

**Amendment No. 1 to HB1651**

**Lundberg**  
**Signature of Sponsor**

**AMEND Senate Bill No. 1597**

**House Bill No. 1651\***

by deleting all the language after the enacting clause and substituting the following:

SECTION 1. Tennessee Code Annotated, Section 28-1-106, is amended by designating the existing language as subsection (a) and adding the following language as appropriately designated subsections:

(b) Persons over the age of eighteen (18) years of age are presumed competent.

(c)

(1) If the person entitled to commence an action, at the time the cause of action accrued, lacks capacity, such person or such person's representatives and privies, as the case may be, may commence the action, after removal of such incapacity, within the time of limitation for the particular cause of action, unless it exceeds three (3) years, and in that case within three (3) years from removal of such incapacity, except as provided for in subdivision (c)(2).

(2) Any individual with court-ordered fiduciary responsibility towards a person who lacks capacity, or any individual who possesses the legal right to bring suit on behalf of a person who lacks capacity, shall commence the action on behalf of that person within the applicable statute of limitations and may not rely on any tolling of the statute of limitations, unless that individual can establish by clear and convincing evidence that the individual did not and could not reasonably have known of the accrued cause of action.

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(3) Any person asserting lack of capacity and the lack of a fiduciary or other representative who knew or reasonably should have known of the accrued cause of action shall have the burden of proving the existence of such facts.

(4) Nothing in this subsection (c) shall affect or toll any statute of repose within this code.

(d) For purposes of this section, the term "person who lacks capacity" means and shall be interpreted consistently with the term "person of unsound mind" as found in this section prior to its amendment by Chapter 47 of the Public Acts of 2011.

SECTION 2. This shall take effect upon becoming law, the public welfare requiring it, and shall apply only to causes of action filed on or after that date.